

ASSEMBLY BILL

No. 2960

Introduced by Assembly Member Ridley-Thomas

February 24, 2006

An act to amend Section 454.5 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2960, as introduced, Ridley-Thomas. Energy: electrical corporation procurement plans.

(1) The existing Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. Among the objectives that a procurement plan is required to accomplish are to moderate the price risk associated with serving its retail customers and to provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the plan.

This bill would require that an additional objective of an electrical corporation's procurement plan is to provide for appropriate incentives to mitigate against price volatility in natural gas supply costs when an electricity supply contract provides for the price of electricity to increase when the price of natural gas used to generate the electricity increases.

(2) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Natural gas plays a critical role in California's energy
4 market, with generation of electricity accounting for half of the
5 natural gas consumed in the state.

6 (b) Natural gas supplies are dwindling nationally and the gap
7 between demand for, and supplies of, natural gas is widening,
8 causing an increase in price volatility.

9 (c) Because of price escalation clauses in electricity supply
10 contracts, natural gas price volatility affects residential,
11 commercial, and industrial electricity bills and threatens
12 California's economy.

13 (d) While California's programs for promoting energy
14 efficiency and expansion of renewable energy resources for the
15 generation of electricity are important policies for decreasing the
16 state's use of natural gas, additional steps need to be taken to
17 mitigate against natural gas price volatility.

18 (e) Wholesale generators, electrical corporations, and gas
19 corporations are the only entities that are in a position to
20 undertake steps to mitigate against natural gas price volatility.

21 (f) The Public Utilities Commission should establish
22 appropriate incentives for wholesale generators, electrical
23 corporations, and gas corporations to mitigate against the risks of
24 price volatility for natural gas used to generate electricity.

25 SEC. 2. Section 454.5 of the Public Utilities Code is amended
26 to read:

27 454.5. (a) The commission shall specify the allocation of
28 electricity, including quantity, characteristics, and duration of
29 electricity delivery, that the Department of Water Resources shall

1 provide under its power purchase agreements to the customers of
2 each electrical corporation, which shall be reflected in the
3 electrical corporation's proposed procurement plan. Each
4 electrical corporation shall file a proposed procurement plan with
5 the commission not later than 60 days after the commission
6 specifies the allocation of electricity. The proposed procurement
7 plan shall specify the date that the electrical corporation intends
8 to resume procurement of electricity for its retail customers,
9 consistent with its obligation to serve. After the commission's
10 adoption of a procurement plan, the commission shall allow not
11 less than 60 days before the electrical corporation resumes
12 procurement pursuant to this section.

13 (b) An electrical corporation's proposed procurement plan
14 shall include, but not be limited to, all of the following:

15 (1) An assessment of the price risk associated with the
16 electrical corporation's portfolio, including any utility-retained
17 generation, existing power purchase and exchange contracts, and
18 proposed contracts or purchases under which an electrical
19 corporation will procure electricity, electricity demand
20 reductions, and electricity-related products and the remaining
21 open position to be served by spot market transactions.

22 (2) A definition of each electricity product, electricity-related
23 product, and procurement related financial product, including
24 support and justification for the product type and amount to be
25 procured under the plan.

26 (3) The duration of the plan.

27 (4) The duration, timing, and range of quantities of each
28 product to be procured.

29 (5) A competitive procurement process under which the
30 electrical corporation may request bids for procurement-related
31 services, including the format and criteria of that procurement
32 process.

33 (6) An incentive mechanism, if any incentive mechanism is
34 proposed, including the type of transactions to be covered by that
35 mechanism, their respective procurement benchmarks, and other
36 parameters needed to determine the sharing of risks and benefits.

37 (7) The upfront standards and criteria by which the
38 acceptability and eligibility for rate recovery of a proposed
39 procurement transaction will be known by the electrical
40 corporation prior to execution of the transaction. This shall

1 include an expedited approval process for the commission's
2 review of proposed contracts and subsequent approval or
3 rejection thereof. The electrical corporation shall propose
4 alternative procurement choices in the event a contract is
5 rejected.

6 (8) Procedures for updating the procurement plan.

7 (9) A showing that the procurement plan will achieve the
8 following:

9 (A) The electrical corporation will, in order to fulfill its unmet
10 resource needs and in furtherance of Section 701.3, until a 20
11 percent renewable resources portfolio is achieved, procure
12 renewable energy resources with the goal of ensuring that at least
13 an additional 1 percent per year of the electricity sold by the
14 electrical corporation is generated from renewable energy
15 resources, provided sufficient funds are made available pursuant
16 to Section 399.6, to cover the above-market costs for new
17 renewable energy resources.

18 (B) The electrical corporation will create or maintain a
19 diversified procurement portfolio consisting of both short-term
20 and long-term electricity and electricity-related and demand
21 reductions products.

22 (C) The electrical corporation will first meet its unmet
23 resource needs through all available energy efficiency and
24 demand reduction resources that are cost effective, reliable, and
25 feasible.

26 (10) The electrical corporation's risk management policy,
27 strategy, and practices, including specific measures of price
28 stability.

29 (11) A plan to achieve appropriate increases in diversity of
30 ownership and diversity of fuel supply of nonutility electrical
31 generation.

32 (12) A mechanism for recovery of reasonable administrative
33 costs related to procurement in the generation component of
34 rates.

35 (c) The commission shall review and accept, modify, or reject
36 each electrical corporation's procurement plan. The
37 commission's review shall consider each electrical corporation's
38 individual procurement situation, and shall give strong
39 consideration to that situation in determining which one or more
40 of the features set forth in this subdivision shall apply to that

1 electrical corporation. A procurement plan approved by the
2 commission shall contain one or more of the following features,
3 provided that the commission may not approve a feature or
4 mechanism for an electrical corporation if it finds that the feature
5 or mechanism would impair the restoration of an electrical
6 corporation's creditworthiness or would lead to a deterioration of
7 an electrical corporation's creditworthiness:

8 (1) A competitive procurement process under which the
9 electrical corporation may request bids for procurement-related
10 services. The commission shall specify the format of that
11 procurement process, as well as criteria to ensure that the auction
12 process is open and adequately subscribed. Any purchases made
13 in compliance with the commission-authorized process shall be
14 recovered in the generation component of rates.

15 (2) An incentive mechanism that establishes a procurement
16 benchmark or benchmarks and authorizes the electrical
17 corporation to procure from the market, subject to comparing the
18 electrical corporation's performance to the
19 commission-authorized benchmark or benchmarks. The incentive
20 mechanism shall be clear, achievable, and contain quantifiable
21 objectives and standards. The incentive mechanism shall contain
22 balanced risk and reward incentives that limit the risk and reward
23 of an electrical corporation.

24 (3) Upfront achievable standards and criteria by which the
25 acceptability and eligibility for rate recovery of a proposed
26 procurement transaction will be known by the electrical
27 corporation prior to the execution of the bilateral contract for the
28 transaction. The commission shall provide for expedited review
29 and either approve or reject the individual contracts submitted by
30 the electrical corporation to ensure compliance with its
31 procurement plan. To the extent the commission rejects a
32 proposed contract pursuant to this criteria, the commission shall
33 designate alternative procurement choices obtained in the
34 procurement plan that will be recoverable for ratemaking
35 purposes.

36 (d) A procurement plan approved by the commission shall
37 accomplish each of the following objectives:

38 (1) Enable the electrical corporation to fulfill its obligation to
39 serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

1 (6) *Provide for appropriate incentives to mitigate against*
2 *price volatility in natural gas supply costs where the electricity is*
3 *being generated from the burning of natural gas and the*
4 *electricity supply contract provides for the price of electricity to*
5 *increase when natural gas prices increase.*

6 (e) The commission shall provide for the periodic review and
7 prospective modification of an electrical corporation's
8 procurement plan.

9 (f) The commission may engage an independent consultant or
10 advisory service to evaluate risk management and strategy. The
11 reasonable costs of any consultant or advisory service is a
12 reimbursable expense and eligible for funding pursuant to
13 Section 631.

14 (g) The commission shall adopt appropriate procedures to
15 ensure the confidentiality of any market sensitive information
16 submitted in an electrical corporation's proposed procurement
17 plan or resulting from or related to its approved procurement
18 plan, including, but not limited to, proposed or executed power
19 purchase agreements, data request responses, or consultant
20 reports, or any combination, provided that the Office of
21 Ratepayer Advocates and other consumer groups that are
22 nonmarket participants shall be provided access to this
23 information under confidentiality procedures authorized by the
24 commission.

25 (h) Nothing in this section alters, modifies, or amends the
26 commission's oversight of affiliate transactions under its rules
27 and decisions or the commission's existing authority to
28 investigate and penalize an electrical corporation's alleged
29 fraudulent activities, or to disallow costs incurred as a result of
30 gross incompetence, fraud, abuse, or similar grounds. Nothing in
31 this section expands, modifies, or limits the State Energy
32 Resources Conservation and Development Commission's
33 existing authority and responsibilities as set forth in Sections
34 25216, 25216.5, and 25323 of the Public Resources Code.

35 (i) An electrical corporation that serves less than 500,000
36 electric retail customers within the state may file with the
37 commission a request for exemption from this section, which the
38 commission shall grant upon a showing of good cause.

39 (j) (1) Prior to its approval pursuant to Section 851 of any
40 divestiture of generation assets owned by an electrical

1 corporation on or after the date of enactment of the act adding
2 this section, the commission shall determine the impact of the
3 proposed divestiture on the electrical corporation's procurement
4 rates and shall approve a divestiture only to the extent it finds,
5 taking into account the effect of the divestiture on procurement
6 rates, that the divestiture is in the public interest and will result in
7 net ratepayer benefits.

8 (2) Any electrical corporation's procurement necessitated as a
9 result of the divestiture of generation assets on or after the
10 effective date of the act adding this subdivision shall be subject
11 to the mechanisms and procedures set forth in this section only if
12 its actual cost is less than the recent historical cost of the divested
13 generation assets.

14 (3) Notwithstanding paragraph (2), the commission may deem
15 proposed procurement eligible to use the procedures in this
16 section upon its approval of asset divestiture pursuant to Section
17 851.

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.